

RAYMOND GEORGE
Claimant

PFT ROBERSON, INC.

Respondent

AND

**PRE-FAB TRANSIT COMPANY AFFILIATES C/O
PROTECTIVE INSURANCE COMPANY**
Insurance Carrier

Docket No. 1,004,755

Claimant appeals Administrative Law Judge Jon L. Frobish's September 3, 2002, preliminary hearing Order.

The Administrative Law Judge (ALJ) denied claimant's request for medical treatment and temporary total disability compensation for a May 15, 2002, work-related accident while employed by respondent. The ALJ found the Kansas Workers Compensation Act (KWCA) did not apply to the parties because claimant was injured outside the state of Kansas, his place of employment was outside the state of Kansas and the contract of employment with respondent was made outside the state of Kansas.

Claimant appeals and contends that the KWCA does apply to the parties because the contract of employment was made in Kansas. Thus, the claimant requests the Board to reverse the preliminary hearing Order and grant claimant's request for medical treatment and temporary total disability compensation.

Conversely, respondent argues the contract of employment was made in Illinois and not in Kansas. Thus, the respondent requests the Board to affirm the preliminary hearing Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Board makes the following findings and conclusions:

There is no dispute between the parties that claimant injured his left knee and low back while employed by the respondent as an over-the-road truck driver on May 15, 2002, in the state of California. Claimant injured his left knee and his low back while placing a tarp over a load of the flatbed truck he was driving.

Respondent provided medical treatment and paid claimant temporary total disability compensation for those injuries through June 24, 2002. At that time, claimant had been released for light duty work and respondent offered claimant light duty work at respondent's headquarters located in the state of Illinois. Respondent also notified claimant that it would provide continuing medical treatment for his work-related injuries in Illinois while he was performing the light duty work.

On July 1, 2002, because respondent would not continue to provide claimant with medical treatment or temporary total disability compensation in Kansas, claimant filed an Application for Hearing and an Application for Preliminary Hearing requesting medical treatment and temporary total disability compensation to be provided by the respondent under the KWCA .

At the preliminary hearing, respondent argued the KWCA did not apply to the parties because first, claimant's contract for employment was made in Illinois, and second, during employment orientation, claimant voluntarily entered into an agreement with the respondent that specified the provisions of the Workmen's Compensation Act of the state of Illinois would apply in the event claimant suffered a work-related injury while employed by the respondent.

In contrast, claimant argues, during a telephone conversation, he had with one of respondent's representatives while he was in Pittsburg, Kansas, he accepted an offer of employment. Thus, claimant argues the employment contract was made in Kansas and the parties are subject to the KWCA.

Through the internet, claimant found the respondent was seeking over-the-road truck drivers. He contacted respondent at an 800 telephone number and respondent faxed him an employment application to complete and employment releases to sign giving claimant's previous employers permission to release information concerning claimant's previous employment activities.

After he faxed respondent the employment application and releases, claimant had three or four telephone conversations with representatives of respondent. Finally, claimant testified the respondent's representative "told me I had the job, I just needed to get in my car and come down to the bus station."¹

Mr. Steve Lunde, currently respondent's claims manager and who in April 2002, was a recruiter for respondent, testified by deposition in this case. Mr. Lunde testified that claimant would not have been offered a job over the telephone by any of respondent's recruiters. Mr. Lunde recalled speaking to claimant but could not recall the specifics of the conversation. Mr. Lunde testified that claimant would not have been offered a job until he had successfully completed 3 days of orientation at respondent's location in Illinois. Mr. Lunde further testified that claimant was required to pass a drug test, written examination, physical examination and a road test before respondent would have offered claimant a job.

After the telephone conversation during which claimant testified he was offered a job, he went to respondent's corporate location in Illinois by bus from Joplin, Missouri with a ticket paid for by respondent. There he completed the 3 day orientation which included passing a drug test, written examination, physical examination and road test. Although he testified he did not remember, claimant also signed an agreement where he agreed he was "subject to the provisions of the Workman's Compensation Act of the State of Illinois, in the event of injury, I understand and agree that my rights will be governed by the provisions of the Workman's Compensation Act of the State of Illinois."²

If a claimant is injured outside the state of Kansas, the KWCA shall apply only when the principal place of employment is within the state or the contract of employment was made within the state, unless the employment contract otherwise specifically provides.³ Here, the Board finds the employment contract was made when claimant accepted respondent's job offer over the telephone in Pittsburg, Kansas. Other employment requirements that were completed during the 3 day orientation, such as the drug testing, were not the last act necessary for the formation of the employment contract. The completion of those other employment requirements were conditions subsequent to the contract and did not prevent it from initially coming into existence.⁴

But the Board also finds, during employment orientation, claimant voluntarily signed an agreement to be subject to the workers compensation laws of the state of Illinois for work-related injuries while he was employed by respondent. The Board concludes that

¹ P.H. Trans. at 28.

² Lunde Depo., Ex. J.

³ K.S.A. 44-506.

⁴ Shehane v. Station Casino, 27 Kan. App. 2d 257, 263, 3 P.3d 551 (2000).

agreement was binding on claimant and jurisdiction is vested in Illinois and not in Kansas.⁵ Thus, the Board, albeit for a different reason, affirms the ALJ's preliminary hearing Order that found Kansas does not have jurisdiction over the parties and the KWCA does not apply.

WHEREFORE, the Board affirms ALJ Jon L. Frobish's September 3, 2002, preliminary hearing Order.

IT IS SO ORDERED.

Dated this ____ day of January 2003.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Victor B. Finkelstein, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Director, Division of Workers Compensation

⁵ Shields v. K.A.T. Transportation, ____ Kan. App. 2d ____, 53 P.3d 1242 (2002).